



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Interior Systems, Inc.

File: B-271469

Date: July 23, 1996

Carol L. O'Riordan, Esq., and Vincent R. Brotski, Esq., Law Offices of Carol L. O'Riordan, for the protester.

Marleen J. Phillips, Esq., and Eric A. Lile, Esq., Department of the Navy, for the agency.

Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly disclosed protester's proprietary information in a solicitation is denied where record shows that the information in question was developed by the government and, therefore, is not proprietary to the protester.

DECISION

Interior Systems, Inc., (ISI) protests the terms of request for proposals (RFP) No. N00600-96-R-1427, issued by the Fleet and Industrial Supply Center (FISC), Department of the Navy, for consolidated mail sorting services. The principal allegation is that the issuance of the solicitation constituted an intentional improper disclosure of information which is proprietary to the protester.

We deny the protest.

BACKGROUND

In 1994, the United States Department of Agriculture (USDA) became part of a government-wide Cooperative Administrative Support Unit (CASU) which was intended to provide administrative services to multiple agencies to avoid duplication of effort and achieve savings. USDA's CASU participation included efforts to implement a government-wide mail management initiative including a presorting program. ISI representatives met with various CASU officials, including representatives from USDA, from February 1995 through May 1995 concerning efforts to consolidate the presorting of mail among various governmental activities; ISI expressed interest in obtaining an 8(a) subcontract to establish and perform the government-wide program.

On May 25, USDA informed the protester that it wished to pursue negotiations with a view to awarding a non-competitive 8(a) subcontract.¹ As part of this effort, on May 30 USDA provided ISI a copy of a statement of work (SOW) previously issued by the General Services Administration (GSA) and requested that the firm use it as a model in preparing a draft SOW for the 8(a) subcontract. ISI submitted a draft SOW 2 days later on June 1. USDA subsequently modified the draft and incorporated a final SOW into solicitation No. RFP-00-96-R-1, which was issued to ISI under the 8(a) program on August 25.

On November 15, USDA informed ISI that it had determined not to proceed with the acquisition under this solicitation because it had recently acquired certain automated sorting equipment in its central mail unit. Thereafter, on November 22, the CASU sent the Department of the Navy a request for consolidated mail sorting services together with a draft SOW which, after some modification, was incorporated into the protested RFP which was issued on February 29, 1996, for competition on an unrestricted basis. This protest followed.

PROTEST

ISI principally alleges that the issuance of the Navy's solicitation constitutes an improper disclosure of proprietary information insofar as the agency appropriated the SOW submitted to USDA during the early stages of the 8(a) procurement in 1995. ISI also challenges several solicitation provisions.

ANALYSIS

As a general rule, proprietary information is that which is marked proprietary or otherwise submitted in confidence to the government. Typically, this includes such information as a firm's overhead and profit rates, and does not include information that the firm could expect to be released to the public. Ursery Cos., Inc., *supra*.

The record does not support ISI's allegation that the Navy's SOW uses material that is proprietary to the protester. First, the SOW drafted by ISI for USDA was not marked proprietary when submitted in June of 1995. Moreover, as the agency's point-by-point comparative analysis of ISI's SOW, the Navy's SOW and GSA's SOW reveals, the SOWs consist of three categories of information: (1) information which

¹Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. These subcontracts may be awarded on a competitive or noncompetitive basis. See Ursery Cos., Inc., B-258247, Dec. 29, 1994, 94-2 CPD ¶ 264.

is common to all three, meaning that it was derived from the GSA SOW and is, therefore, not proprietary to ISI; (2) information which is unique to ISI's SOW but not contained in the Navy's SOW, meaning that the Navy did not use this allegedly proprietary material; and, (3) information which is unique to the Navy's SOW and not contained in ISI's SOW. In its comments on the agency report, ISI does not present a credible rebuttal to the agency's analysis and our review of the three SOWs confirms the accuracy of the Navy's position.

Accordingly, since the analysis of the material at issue compels the conclusion that the Navy did not use or disseminate information which was unique to ISI's SOW draft, we conclude that the information in the present SOW is simply not proprietary to the protester as alleged.

ISI also challenges several solicitation provisions. First, the firm alleges that the Navy included an overly restrictive 12-month experience requirement in an effort to eliminate the protester from consideration. As the agency points out, however, the protester now has the requisite experience, thus rendering its challenge academic. Second, ISI contended that the solicitation contained the wrong small business size standard in an effort to eliminate the protester from competition; the size standard was subsequently modified by amendment and ISI is eligible for consideration under the new standard. Third, ISI originally challenged the evaluation provisions of the RFP as being ambiguous; these provisions were subsequently modified by amendment without any specific challenge by the protester. Finally, ISI challenges the RFP as being deficient because it did not identify a contracting officer by name. While we are unaware of any requirement for such a provision, in fact, the name of the contracting officer was publicly available, and was obtained by ISI prior to the filing of its protest.

The protest is denied.

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